IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 7930 of 2007(R)

(AGAINST THE ORDER DATED 25/11/2006 PASSED IN EP NO. 298/2004 IN OS NO. 43/2002 ON THE FILE OF MUNSIFF' COURT, CHITTUR)

PETITIONER:

SHAHUL HAMEED, S/O.MUHAMMED KASIM RAWTHER, VADAVANOOR AMSOM & VILLAGE, CHITTUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.SAJAN VARGHEESE K.

RESPONDENTS:

THE FEDERAL BANK LTD., PUDUNAGARAM BRANCH, PUDUNAGARAM, PALAKKAD DISTRICT, REP. BY ITS MANAGER.

BY ADV. SRI.MOHAN JACOB GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 7930/2007 R

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE EXECUTION PETITION VIZ IP NO. 298/2004 IN OS NO. 43/2002 ON THE FILE OF THE MUNSIFF'S COURT, CHITTUR.

EXT.P2. COPY OF THE OBJECTION DT. 6/12/2004 FILED IN EP NO. 298/2004 IN OS NO. 43/2002 ON THE FILE OF MUNSIFF COURT, CHITTUR.

EXT.P3. COPY OF THE MEDICAL CERTIFICATE DT. 18/3/2006 ISSUED TO THE PETITIONER.

EXT.P4. COPY OF THE AFFIDAVIT DT. 25/11/2006 BY THE RESPONDENT IN EP NO. 298/04 IN OS NO. 43/2002 ON THE FILE OF THE MUNSIFF COURT CHITTUR.

EXT.P5. COPY OF THE ORDER DT. 25/11/2006 IN EP NO. 298/2004 IN OS NO. 43/2002 ON THE FILE OF MUNSIFF COURT, CHITTUR.

True copy

tga

M.N.KRISHNAN, J.

WP(C)No. 7930 OF 2007 R

Dated this the 25th May, 2007.

JUDGMENT

This writ petition is preferred challenging the order in E.P.298/04 in O.S.43/2002. The decree holder moved an application for executing the decree by arrest of the judgment debtor. The judgment debtor entered appearance and submitted a counter statement contending that he is an agriculturist and on account of the agricultural loss he is not able to pay the amount. It is also stated by him that he has to look after a large family and he may be permitted to discharge the amount by paying a monthly instalment of Rs.1,000/-. This was not acceded to by the decree holder. When the matter came up for consideration, the decree holder filed an affidavit to prove the means of the judgment debtor and on acceptance of the same the executing court ordered arrest of the judgment debtor. It is against the decision the present writ petition is filed.

2. When the matter came up for admission this court directed the judgment debtor to make payment of Rs.15,000/-. But even that amount is not paid. Both sides are heard. From the counter statement it is crystal clear that the judgment debtor has no specific plea that he has no means to pay but only speaks about some loss that had

occasioned to his agricultural operation. The decree holder filed an affidavit proving the means and therefore the finding of the executing court that the judgment debtor has got the means to pay the amount and he is neglecting to pay the amount has to be confirmed and I do so. Therefore the writ petition lacks merit and is dismissed. But at the same time some indulgence can be shown to the judgment debtor to wipe off the liability as follows:

3. The judgment debtor is directed to pay a sum of Rs.20,000/- on or before 30.6.2007 and to pay the balance amount in three equal monthly instalments starting from 30.7.2007. If the judgment debtor fails to pay the amount of Rs.20,000/- on or before 30.6.2007 or commits breach of one instalment, he will forfeit the benefit and the decree holder will be entitled to proceed for arrest and detention of the judgment debtor in the civil prison.

The execution of warrant will stand deferred till 30.6.2007.

M.N.KRISHNAN
Judge

jj